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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 AVIATION SUPPLIES & ACADEMICS, INC.)
11 d/b/a ASA, a Washington corporation,)
12 Plaintiff,)

Civil Action No.
COMPLAINT

13 v.)

14 AIRCRAFT TECHNICAL BOOK COMPANY,)
15 LLC, a Colorado corporation,)
16 Defendant.)

17 **I. NATURE OF ACTION**

18 This is an action for injunctive relief, damages and other relief based on the Defendant's
19 unauthorized use of Plaintiff's International Standard Book Numbers ("ISBN") to market and
20 promote Defendant's electronic books ("e-books"), among other things, constituting false
21 designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a),
22 unfair and deceptive business practices in violation of the State of Washington's Unfair
23 Business Practices-Consumer Protection Act, RCW 19.86 *et. seq*, and violating Washington's
24 common law against unfair business practices. Allegations made herein on information and
25 belief are asserted on the basis that the allegations are likely to have evidentiary support after a
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1 reasonable opportunity for further investigation and discovery. The Plaintiff, by and through its
2 undersigned counsel, for its Complaint against the Defendant states the following.

3 **II. PARTIES**

4
5 1. Aviation Supplies & Academics, Inc. d/b/a ASA ("ASA"), is a Washington
6 corporation with a place of business of 7005 132nd Place SE, Newcastle WA 98059,
7 hereinafter also referred to as "Plaintiff."

8 2. Aircraft Technical Book Company, LLC, is a limited liability company of
9 Colorado with a place of business at 72413 US Hwy 40, Tabernash, CO 80478, hereinafter also
10 referred to as "Defendant." Defendant either directly or indirectly sells and/or promotes e-
11 books and hardcopy books that are the subject of this lawsuit in this Judicial District and in
12 other judicial districts throughout the United States.

13 **III. JURISDICTION AND VENUE**

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15 3. This Court has subject matter jurisdiction because this is an action for unfair
16 competition under 15 U.S.C. §1125(a). The Court's subject matter jurisdiction over this matter
17 is further proper under 28 U.S.C. §§1331 and 1338, and 15 U.S.C. §1121. This Court has
18 supplemental jurisdiction over the state law claims herein under 28 U.S.C. §1367(a) because
19 they involve the same unauthorized use of Plaintiff's ISBN numbers to market Defendant's
20 books, and the same use of Defendant's book covers to market Plaintiff's books, that result in
21 false designation of the origin of Plaintiff's books, as asserted herein under 15 USC §1125(a),
22 all of which are so related to the federal claims that they form part of the same case or
23 controversy and are derived from a common nucleus of operative facts.
24

25 4. Upon information and belief, Defendant has sufficient contacts with this judicial
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1 district such that this forum is a fair and reasonable one, including, at the time of the filing of
2 this Complaint, having transacted, or currently transacting, business within the Western District
3 of Washington by offering books for sale and selling e-books in Washington State.
4 Furthermore, upon information and belief, Defendant has committed acts in violation of 15
5 U.S.C. §1125(a) and RCW 19.86 *et. seq*, complained of herein within the Western District of
6 Washington. For these reasons, personal jurisdiction exists over Defendant.
7

8 5. Venue over this action is proper in this Court under 28 U.S.C. §§ 1391(b) and
9 (c).
10

11 **IV. FACTUAL BACKGROUND**

12 6. Plaintiff ASA is engaged in the business, *inter alia*, of creating and publishing
13 books for use in aviation education and training. ASA and its predecessors have been
14 conducting business in the United States in the field of aviation since 1947. Today ASA is a
15 leading publisher of aviation instructional books in the United States and one of the largest
16 producers of private pilot supplies in the United States.
17

18 7. Defendant sells, distributes and publishes books in the field of aviation
19 instruction, at least some of which compete with ASA's books.

20 8. Starting on or about January of 2010, ASA and Andy Gold (Defendant's current
21 corporate registered agent, believed by ASA to also be a current controlling shareholder of
22 Defendant corporation and the president or CEO of Defendant) were engaged in a dispute. At
23 the time, Mr. Gold was operating as a sole proprietor under the same trade name as Defendant,
24 Aircraft Technical Book Company. ASA sent a written demand to Mr. Gold, demanding that
25 Mr. Gold cease and desist using online images of ASA's book covers comprising ASA's
26

1 trademarks and trade dress, to market Mr. Gold's e-books. See Exhibit 1 attached hereto.
2 During the dispute, ASA provided multiple online examples to Mr. Gold demonstrating his
3 violations where ASA's book covers were used by Mr. Gold, without ASA's authorization, to
4 promote his e-books. See Exhibit 2 attached hereto. Although Mr. Gold admitted engaging in
5 the accused conduct by stating in an email of January 8, 2010, that "*some of the product*
6 *descriptions listed do fall within ...stated concerns,*" he nonetheless refused to abate all of
7 the accused conduct unless ASA located each instance online in which the accused conduct
8 occurred. Mr. Gold's refusal to address the accused conduct until ASA pointed out each online
9 location, demonstrated his intent to continue the infringing conduct. Rather than file suit to
10 obtain discovery in response to Mr. Gold's initial refusal to abate infringing conduct, ASA
11 continued to correspond with the Mr. Gold to try and reach an amicable resolution. Although
12 ASA could not verify with certainty that all such violations were addressed, it appeared to ASA
13 that Mr. Gold eventually addressed the violations by disassociating ASA book cover images
14 from Mr. Gold's e-books.
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18 9. On or about June 18, 2013, through June 19, 2013, ASA was informed by a
19 distributor for ASA books that the Defendant was using, without permission from ASA, ASA's
20 International Books Standard Numbers ("ISBNs") to market Defendant's books.

21 10. An International Books Standard Number, or ISBN, is a unique numeric
22 commercial book identifier, widely used by publishers internationally and in the United States.
23 Distributors, retailers, wholesalers, and libraries commonly search for specific books by ISBN
24 number for ordering purposes. According to the U.S. ISBN Agency, "[t]he purpose of the
25 ISBN is to establish and identify one title or edition of a title from one specific publisher and is
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1 unique to that edition, allowing for more efficient marketing of products by booksellers,
2 libraries, universities, wholesalers and distributors.” See FAQs, U.S. ISBN Agency,
3 http://www.isbn.org/standards/home/about/faqs_main.html (last visited August 23, 2013).
4

5 11. Various retail websites, including third party retailer websites and the
6 Defendant’s own retailing website, images of covers of Defendant’s books are displayed in
7 association with ASA’s ISBNs. Attached hereto, as Exhibit 3, is a true and correct copy of a
8 web page from a third party retail website where the cover of Defendant’s book and a link to
9 purchase a hardcopy book or e-book is shown next to ASA’s ISBN, namely, 9781560277255.
10 The e-book purchasable from this link is not an ASA e-book. Attached hereto, as Exhibit 4, is
11 a true and correct copy of a web page from Defendant’s own website, also showing the cover of
12 Defendant’s book and a link to purchase a hardcopy l book or e-book next to the ASA’s ISBN,
13 namely, 9781560277255. Again, the e-book purchasable from this link is not an ASA e-book.
14 By comparison, attached hereto, as Exhibit 5, is a true and correct copy of a web page from
15 ASA’s own website for one of its books, *Practical Test Standards: Sport Pilot*, which has an
16 ISBN of 978-1-56027-725-5, the same ISBN as shown in the Defendant controlled web pages
17 describe above.
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20 12. In addition, for some books, Defendant also displays ASA’s book identification
21 code next to the cover of Defendant’s book. For example, ASA’s book identification code for
22 *Practical Test Standards: Sport Pilot*, ASA-8081-SPORT, is shown next to the cover of
23 Defendant’s book in both third party retailer websites and Defendant’s own website. See, e.g.,
24 Exhibits 3, 4 & 5.
25

26 13. Exhibit 6, attached hereto, is a true and correct copy of a web page from ASA’s
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1 website for one of ASA's books, *Aviation Instructor's Handbook*, which is assign an ASA
 2 ISBN of 978-1-56027-749-1. Exhibit 7 shows a true and correct copy of a web page from a
 3 third party retail website where a copy of Defendant's e-book, *Aviation Instructor's Handbook*
 4 can be purchased, and is displayed next to ASA's ISBN for its version of *Aviation Instructor's*
 5 *Handbook*, namely 9781560277491. Exhibit 8 shows a true and correct copy of a web page
 6 from Defendant's website where a copy of Defendant's e-book, *Aviation Instructor's Handbook*
 7 can be purchased, and is displayed next to ASA's ISBN for its version of *Aviation Instructor's*
 8 *Handbook*, namely 9781560277491.

10 14. Exhibit 9, attached hereto, shows a true and correct copy of five additional web
 11 pages from Defendant's website, showing covers for Defendant's books and links to purchase
 12 hardcopy books or e-books, each next to an ASA ISBN, used without ASA's permission. The
 13 table below lists the ASA ISBNs used without permission by Defendant in Exhibit 9.

15 <u>ASA Book Title</u>	<u>ASA's ISBN</u>
16 Practical Test Standards: Private Pilot Airplane (Single-Engine Land)	978-1-56027-940-2
17 Practical Test Standards: Private Pilot Airplane (Multi-Engine Land)	978-1-56027-941-9
18 Practical Test Standards: Instrument Rating (Airplane, Helicopter & Powered Lift)	978-1-56027-779-8
19 Practical Test Standards: Commercial Pilot (Single or Multi-Engine Land)	978-1-56027-942-6
20 Practical Test Standards: Airline Transport Pilot & Type Rating - Airplane	978-1-56027-729-3

22 15. On information and belief, the above referenced conduct provides only limited
 23 examples of Defendant's pervasive conduct in which the Defendant is intentionally associating,
 24 without permission from ASA, its book covers online with ASA's ISBNs and ASA's book
 25 identification codes, and using ASA's ISBNs and book identification codes to market and
 26 COMPLAINT - 6

1 promote Defendant's e-books and/or books, thus falsely designating the origin of Defendant's
2 book or e-books, causing confusion in the market place, and diluting the goodwill associated
3 with ASA trademarks and trade dress. ASA is one of the leading, if not the leading, publisher
4 of private aviation instruction materials in the United States, and on information and belief,
5 Defendant, as a reseller of ASA publications, among other books, is well aware of the
6 substantial goodwill associated with ASA publications, and the widespread use of ASA ISBNs
7 by distributors and retailers to search for ASA publications. By associating ASA ISBNs with
8 Defendant's book cover images, and Defendant's books or e-books, Defendant improperly
9 promotes sales of its books based using the substantial goodwill of ASA.
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11
12 16. By displaying the images of the covers of Defendant's books in association with
13 ASA's ISBNs and ASA book identification codes, without ASA's permission, Defendant's
14 actions are likely to cause confusion, or to cause mistake, or to deceive as to affiliation,
15 connection, association, origin, sponsorship or approval, between ASA and Defendant.
16

17 17. By selling copies of Defendant's hardcopy books or ASA's hardcopy books,
18 using ASA's ISBNs or ASA book identification codes, without ASA's permission,
19 Defendant's actions are likely to cause confusion, or to cause mistake, or to deceive as to
20 affiliation, connection, association, origin, sponsorship or approval, between ASA and
21 Defendant.
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23 18. By associating Defendant's e-books online with ASA's ISBNs or ASA's book
24 identification codes, without permission from ASA, Defendant has falsely designated the origin
25 of its goods.
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V. CLAIMS FOR RELIEF

**COUNT ONE: VIOLATION OF THE LANHAM ACT
FALSE DESIGNATION OF ORIGIN**

19. ASA hereby reincorporates the allegations contained in paragraphs 1-18 above as if fully set forth herein.

20. Defendant's activities described above falsely represent or suggest an affiliation, connection, and association between ASA and Defendant as to the origin, sponsorship, and approval of Defendant's goods and commercial activities, and therefore constitute false designation of origin within the meaning of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

21. Defendant has acted willfully with the knowledge that its activities are likely to confuse the public as to the affiliation, connection and association among ASA and Defendant and/or their respective products.

22. By reason of Defendant's acts, as alleged herein, ASA has suffered and will continue to suffer damages and immediate and irreparable harm to its business activities, reputation and goodwill unless and until the activities of Defendant are enjoined during the pendency of this action and thereafter.

23. Accordingly, ASA is entitled to injunctive relief under 15 U.S.C. § 1116; and to damages (including Defendant's profits, damages suffered by ASA, the costs of this action, and reasonable attorneys fees) under 15 U.S.C. § 1117(a).

**COUNT TWO: VIOLATION OF WASHINGTON'S
UNFAIR BUSINESS PRACTICES-CONSUMER PROTECTION ACT**

24. ASA hereby reincorporates the allegations contained in paragraphs 1-18 above as if fully set forth herein.

1 25. Defendant's activities described above constitute an unfair method of
2 competition in business and an unfair trade practice in business, as well as fraudulent
3 misrepresentation, which is damaging to the public interest in violation of Washington's Unfair
4 Business Practices-Consumer Protection Act, RCW 19.86 *et. seq.*

5
6 26. Defendant has acted willfully with the knowledge that its activities are likely to
7 confuse the public as to the affiliation, connection and association among ASA and Defendant
8 and/or their respective products.

9 27. ASA has been, and will continue to be, damaged by Defendant's unfair methods
10 of competition and unfair trade practices in a manner and amount to be proven at trial and that
11 cannot be fully measured or compensated in economic terms. Defendant's actions have
12 damaged, and will continue to damage, ASA's business, market, reputation, and goodwill, and
13 may discourage current and potential customers from dealing with ASA. Such irreparable harm
14 will continue unless Defendant's acts are restrained and/or enjoined during pendency of this
15 action and thereafter.
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18 **COUNT THREE: VIOLATION OF WASHINGTON'S
COMMON LAW PROHIBITING UNFAIR COMPETITION**

19 28. ASA hereby reincorporates the allegations contained in paragraphs 1-18 above
20 as if fully set forth herein.

21
22 29. By improperly using images of Defendant's books to promote sales of ASA's
23 books as a reseller, Defendant deceives the public by reverse passing off ASA's products as its
24 own products, and engages in unfair and deceptive acts that are likely to cause confusion or
25 mistake among consumers.
26

1 30. By improperly associating Defendant's book cover images with ASA's ISBNs
2 and book identification codes, Defendant deceives the public by passing of its products as ASA
3 products, and engages in unfair and deceptive acts that are likely to cause confusion or mistake
4 among consumers.

5
6 31. By improperly using ASA's ISBNs to promote and sell Defendant's e-books,
7 Defendant deceives the public by passing off its own products as ASA's products and engages
8 in deceptive and unfair acts that are likely to cause confusion or mistake among consumers.

9 32. These acts of Defendant thus constitute unfair competition and are a violation of
10 the common law rights of ASA.

11
12 33. Defendant's unauthorized activities were, and are, likely to cause confusion or
13 mistake among consumers as to the origin, sponsorship or affiliation of both ASA and
14 Defendant's products.

15 34. ASA has been, and will continue to be, damaged by Defendant's unfair
16 competition in a manner and amount to be proven at trial and that cannot be fully measured or
17 compensated by economic terms. Defendant's actions have damaged, and will continue to
18 damage, ASA's business, market, reputation, and goodwill, and may discourage current and
19 potential customers from dealing with ASA. Such irreparable harm will continue unless
20 Defendant's acts are restrained and/or enjoined during the pendency of this action and
21 thereafter.
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23 **VI. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff ASA respectfully prays for the following relief:
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26 1. For preliminary and permanent injunctions restraining Defendant, its officers,
COMPLAINT - 10

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1 agents, servants, representatives and employees, and all those in active concert with Defendant
2 or participation with Defendant, from doing, causing or abetting any of the following:

3 a. Any publication, sale, promotion, distribution or display of any work not
4 published by ASA in association with or related to any number, code, symbol or other
5 means of identification, including, but not limited to, International Standard Book
6 Numbers, that belong to ASA.

8 b. Any publication, sale, promotion, distribution or display of any work
9 published by ASA in association or related to with any number, code, symbol or other
10 means of identification, including, but not limited to, International Standard Book
11 Numbers, that do not belong to ASA.

13 c. Any publication, sale, promotion, distribution or display of any work
14 published by ASA in association with or related to any image, illustration, design,
15 trademark, trade dress, depiction or description of a work not published by ASA.

16 d. Any publication, sale, promotion, distribution or display of any work not
17 published by ASA in association with or related to any image, illustration, design,
18 depiction or description of a work published by ASA.

19 2. That ASA have and receive such damages as it has sustained in consequences of
20 Defendant's violation of the Lanham Act, of Washington's Unfair Business Practices –
21 Consumer Protection Act, and of Washington's common law prohibiting unfair competition;
22

23 3. That the court adjudge and declare that the acts of Defendant have been willful,
24 deliberate, and calculated to deprive ASA of its rights;
25

26 4. That Defendant be compelled to account for and pay over to ASA all of the
COMPLAINT - 11

1 profits derived by Defendant by its unlawful acts, as set forth herein, as well as the damages
2 ASA has suffered by reason thereof, and that said damages be trebled;

3 5. That ASA be awarded its costs and disbursements of this action, together with
4 reasonable attorneys fees, pursuant to 15 U.S.C. § 1117;

5 6. That Defendant be ordered to pay ASA prejudgment interest on all sums allowed
6 by law;

7 7. That the Court adjudge this to be an exceptional case and require Defendant to
8 pay over to ASA the costs of this action, including reasonable attorneys fees and interest to the
9 extent provided by 15 U.S.C. § 1117 and R.C.W. § 19.86.090; and
10

11 8. That ASA have such other and further relief as the court may deem just and
12 proper.
13

14 **VII. DEMAND FOR JURY TRIAL**

15 Plaintiff demands a trial by jury as to all issues so triable.

16 Respectfully submitted,

17 AVIATION SUPPLIES & ACADEMICS, INC
18 Plaintiff,

19 By its Attorneys:

20 LANE POWELL PC.

21
22 Dated: August 23, 2013

23 By: s/ Brian G. Bodine
24 Brian G. Bodine (WSBA No. 22414)
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DWC LAW FIRM, P.S.

Dated: August 23, 2013

By: /s/ David Chen
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